

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
8

9 ELROY W. BROWNING,

CASE NO. 1:05-CV-00342-AWI-LJO-P

10 Plaintiff,

ORDER DISREGARDING UNTIMELY  
OBJECTION

11 v.

(Doc. 22)

12 JEANNE WOODFORD, et al.,

ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL

13 Defendants.

14 (Doc. 22)

15 \_\_\_\_\_/

16  
17 Plaintiff Elroy W. Browning (“plaintiff”) is a state prisoner proceeding pro se and in forma  
18 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On November 10, 2005, the  
19 Honorable Anthony W. Ishii issued an order adopting a Findings and Recommendations issued by  
20 the undersigned on September 2, 2005. (Docs. 15, 21.) On November 23, 2005, plaintiff filed an  
21 objection to the Findings and Recommendations, and a motion seeking the appointment of counsel.  
(Doc. 22.)

22  
23 Plaintiff’s objection to the Findings and Recommendations is untimely, as it was filed after  
24 the time period in which to file an objection and after the district court issued an order adopting the  
25 Findings and Recommendations. The objection is therefore disregarded.

26 The court cannot require an attorney to represent plaintiff. Mallard v. United States District  
27 Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). In certain exceptional  
28 circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. §

1 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991). Without a reasonable method  
2 of securing and compensating counsel, this court will seek volunteer counsel only in the most serious  
3 and exceptional cases. “A finding of exceptional circumstances requires an evaluation of both ‘the  
4 likelihood of success of the merits and the ability of the [plaintiff] to articulate his claims *pro se* in  
5 light of the complexity of the legal issues involved.’” Terrell, 935 F.2d at 1017 (citations omitted).

6 In the present case, the court does not find the required exceptional circumstances. Even if  
7 it is assumed that plaintiff is not well versed in the law and that he has made serious allegations  
8 which, if proved, would entitle him to relief, his case is not exceptional. This court is faced with  
9 similar cases almost daily. At this early stage in the proceedings, the court cannot make a  
10 determination that plaintiff is likely to succeed on the merits, and based on a review of the record  
11 in this case, the court does not find that plaintiff cannot adequately articulate his claims. Terrell, 935  
12 F.2d at 1017.

13 As set forth herein, plaintiff’s objection to the Findings and Recommendations is  
14 DISREGARDED on the ground that it is untimely, and plaintiff’s motion for the appointment of  
15 counsel, set forth in the objection, is DENIED, without prejudice.

16  
17 IT IS SO ORDERED.

18 **Dated:** November 29, 2005  
19 b9ed48

/s/ Lawrence J. O'Neill  
UNITED STATES MAGISTRATE JUDGE